

1 Tammy Hussin, Esq. (Bar No. 155290)
2 Lemberg & Associates, LLC
3 6404 Merlin Drive
4 Carlsbad, CA 92011
5 Telephone (855) 301-2100 ext. 5514
6 thussin@leberglaw.com

7 Lemberg & Associates, LLC
8 1100 Summer Street
9 Stamford, CT 06905
10 Telephone: (203) 653-2250
11 Facsimile: (203) 653-3424

12 Attorneys for Plaintiff,
13 David Meske

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 David Meske,

18
19 Plaintiff,

20 vs.

21 Aircare Medical Supply, Inc.; and DOES
22 1-10, inclusive,

23 Defendants.
24
25
26
27
28

CV13-9254 PJW

Case No.:

COMPLAINT FOR VIOLATION
OF THE TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. § 227, *ET. SEQ.* AND
CALIFORNIA BUSINESS &
PROFESSIONS CODE 17200,
ET. SEQ.

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

FILED
13 DEC 17 AM 11:59
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

1 For this Complaint, the Plaintiff, David Meske, by undersigned counsel, states
2 as follows:
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the
6 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA"), and
7
8 California Business & Professions Code 17200, *et. seq.*

9 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

10 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that
11 Defendants transact business here, Plaintiff resides in this judicial district, and a
12 substantial portion of the acts giving rise to this action occurred here.
13

14
15 **PARTIES**

16 4. The Plaintiff, David Meske (hereafter "Plaintiff"), is an adult individual
17 residing in Goleta, California, and is a "person" as defined by 47 U.S.C. § 153(10).
18

19 5. Defendant, Aircare Medical Supply, Inc. ("Aircare"), is a California
20 business entity with an address of 7039 Hayvenhurst Avenue, Van Nuys, California,
21 and is a "person" as defined by 47 U.S.C. § 153(10).
22

23 6. Does 1-10 (the "Agents") are individual employees and/or agents
24 employed by Aircare and whose identities are currently unknown to the Plaintiff. One
25 or more of the Agents may be joined as parties once their identities are disclosed
26 through discovery.
27
28

1 7. Aircare at all times acted by and through one or more of the Agents.

2 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**

3
4 8. In an effort to address a growing number of telephone marketing calls,
5 Congress enacted in 1991 the Telephone Consumer Protection Act (TCPA). The
6 TCPA restricts the making of telemarketing calls and the use of automatic telephone
7 dialing systems and artificial or prerecorded voice messages. In 1992, the Federal
8 Communications Commission adopted rules to implement the TCPA, including the
9 requirement that entities making telephone solicitations institute procedures for
10 maintaining company-specific do-not-call lists.
11

12
13 9. Toward that end, 47 C.F.R. 64.1200(c)(2), prohibits any solicitation to a
14 “residential telephone subscriber who has registered his or her telephone number on
15 the national do-not-call registry of persons who do not wish to receive telephone
16 solicitations that is maintained by the Federal Government.
17

18 10. Such do-not-call registrations must be honored indefinitely, or until the
19 registration is cancelled by the consumer or the telephone number is removed by the
20 database administrator.” *Id.*
21

22 11. In addition, “if a person or entity making a call for telemarketing
23 purposes (or on whose behalf such a call is made) receives a request from a residential
24 telephone subscriber not to receive calls from that person or entity, the person or
25 entity must record the request and place the subscriber's name, if provided, and
26
27
28

1 telephone number on the do-not-call list at the time the request is made. 47 C.F.R.
2 64.1200(d)(3).
3

4 12. A private right of action exists under 47 C.F.R. 64.1200 for any person
5 who has received “more than one telephone call within any 12-month period by or on
6 behalf of the same entity in violation of the regulations prescribed” by the FCC. 47
7 U.S.C. § 227(c)(5).
8

9
10 **THE FACTS**

11 13. Plaintiff values his right to be free from unwanted intrusions and has no
12 interest or desire to receive unsolicited calls in the privacy of his home. In an effort to
13 ward of unwanted intruders, prior to the calls herein alleged, Plaintiff registered his
14 residential telephone number on the national do-not-call registry.
15

16 14. Despite Plaintiff’s do-not-call registration, Defendant called Plaintiff on
17 his residential telephone to solicit its goods and services to him.
18

19 15. Each of the aforementioned calls was placed using an automatic
20 telephone dialing system (“Automated Calls”).
21

22 16. When Plaintiff answered the Automated Calls, there was no person
23 available with whom Plaintiff could speak. Instead, Plaintiff experienced a period of
24 dead air for approximately five seconds.
25
26
27
28

1 another, or his private affairs or concerns, is subject to liability to the other for
2 invasion of privacy, if the intrusion would be highly offensive to a reasonable person.”
3

4 32. California further recognizes the Plaintiff’s right to be free from
5 invasions of privacy, thus the Defendants violated California state law.

6 33. The Defendants intentionally intruded upon Plaintiff’s right to privacy by
7 continually harassing Plaintiff with the above referenced telephone calls.
8

9 34. The telephone calls made by the Defendants to Plaintiff were so
10 persistent and repeated with such frequency as to be considered, “hounding the
11 plaintiff,” and, “a substantial burden to her existence,” thus satisfying the Restatement
12 of Torts, Second, § 652B requirement for an invasion of privacy.
13

14 35. The conduct of the Defendants in engaging in the illegal collection
15 activities resulted in multiple invasions of privacy in such a way as would be
16 considered highly offensive to a reasonable person.
17

18 36. As a result of the intrusions and invasions, the Plaintiff is entitled to
19 actual damages in an amount to be determined at trial from the Defendants.
20

21 37. All acts of the Defendants and its agents were committed with malice,
22 intent, wantonness, and recklessness, and as such, the Defendants are subject to
23 punitive damages.
24
25
26
27
28

COUNT III

Violation of Business and Professions Code
Section 17200 et. seq.

38. The Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

39. Defendant engaged in repeated instances of unlawful activity and unfair business practices as prohibited by Business and Professions Code sections 17200, *et seq.* (“hereinafter “UCL”).

40. A business practice is “unlawful” if it violates an underlying state or federal statute or common law. Defendant is in violation of the UCL by violating the TCPA.

41. Defendant engaged in unfair business practices in violation of the UCL by continuing to contact Plaintiff after being requested not to call, invading Plaintiff’s right of privacy and causing injury thereby.

42. It is likely that Defendant engages in a pattern of similar conduct when soliciting other California residents, invading their privacy rights and causing injury.

43. Defendant should be enjoined from further violations of the TCPA when soliciting its goods and services to California residents.

PRAYER FOR RELIEF


WHEREFORE, the Plaintiff prays that judgment be entered against the Defendants:

- A. An Order from the Court enjoining Defendant from violating the TCPA when soliciting its goods and services to California residents;
- B. As a result of Defendant's negligent violations of the TCPA, an award of \$500.00 in statutory damages for each call pursuant to 47 U.S.C. § 227(b)(3)(B);
- C. As a result of Defendant's willful and/or knowing violations of the TCPA, an award of treble damages of \$1500 for each call to 47 U.S.C. § 227(b)(3)(B) and (C);
- D. Costs of litigation and reasonable attorney's fees pursuant to Cal. Civ. Code § 1021.5 for violations of the B&P Code; and
- E. Such other relief as the Court deems just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

DATED: December 13, 2013

TAMMY HUSSIN

By: 

Tammy Hussin, Esq.
Lemberg & Associates, LLC
Attorney for Plaintiff, David Meske